

VOLUNTARY BINDING ARBITRATION AGREEMENT

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This is a voluntary agreement. You are not required to sign this agreement as a condition for admission to this Facility or to continue to receive care at this Facility. You may receive care and treatment even if you do not sign this agreement.

This voluntary Binding Arbitration Agreement (“Agreement”) is entered into by FACILITY NAME (“Facility”) and between

_____ (“Resident”) and, if applicable,
_____ (“Resident’s Legally Authorized Representative” / “Representative”), collectively referred to as the “Parties.” This Agreement is an addendum to the admission agreement between the parties, for which consideration has been given and received by the parties. In further consideration for this Agreement, the Parties acknowledge they will receive mutual benefits from resolution of any dispute/controversy through efficient arbitration and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by all parties.

1. **Not a Pre-Condition to Admission.** Resident and/or Resident’s Legally Authorized Representative is not required to sign this Agreement as a condition of admission to, or as a requirement to continue to receive care at, the Facility.

_____ *Resident’s Initials* _____ *Representative’s Initials*

2. **Agreement to Arbitrate All Disputes.** This is a voluntary Agreement by the Parties to have all disputes resolved through binding arbitration. Arbitration is an out-of-court alternate form of dispute resolution, decided by an impartial third party. Arbitration is different from traditional litigation in the court system, which has a judge, sometimes a jury, and trial. In the event of any dispute or controversy between the Parties, including those arising out of the diagnosis, treatment, or care of the Resident by the Facility, the dispute or controversy shall be submitted to binding arbitration.

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DISCLAIMER: This document is intended to serve as guidance only and should not be taken or construed as legal advice. Always consult with a local attorney who specializes in this area of law to ensure compliance with the law.

3. **Parties Defined.** The *Facility* includes, but is not limited to, the operator, governing body, officers, directors, members, shareholders, administrator, employees, managers, agents, and any parent company, subsidiary, or affiliates, and any person or entity alleged to be responsibility for the acts or omissions of the Facility. The *Resident* includes, but is not limited to, the Resident, the Resident's Representative, guardian, conservator, attorney-in-fact, agent, sponsor, or any other person whose claim is derived through or on behalf of the Resident, including his/her spouse, child, parent, executor, administrator, personal representative, heir, survivor, and anyone entitled to bring a wrongful death claim relating to the Resident.
4. **Rescission Rights.** The Resident or his/her Representative has a right to rescind this agreement this Agreement within thirty (30) calendar days of signature by providing written notice of rescission. This Agreement will apply to any disputes that may arise prior to any rescission pursuant to this provision.

_____ *Resident's Initials* _____ *Representative's Initials*

5. **Application of Federal Arbitration Act.** The parties agree that the underlying Admission Agreement involves interstate commerce, through the Facility's Medicare participation and because the Facility may purchase items from out-of-state. Accordingly, the Federal Arbitration Act applies to this Agreement.
6. **Duty to Demand Arbitration.** It is the responsibility of the person/entity making the claim to demand arbitration, by giving written notice to the other party or parties. The demand for arbitration will describe the nature of the controversy and the remedy sought. If a party overlooks its obligation to arbitrate all disputes and participates in litigating a matter in the court system, that party will not be deemed to have waived the right to compel arbitration, as long as the motion to compel arbitration is served before the first day of trial.
7. **The Arbitrator Has Sole Jurisdiction.** The arbitrators will be the only ones with the authority and jurisdiction to resolve all party disputes, including wrongful death claims and all disputes about the validity, enforceability,

scope, interpretation, severability and waiver of this Agreement, as well as the competency of the Parties.

8. **Waiver of Judge, Jury, and Trial. No Appeal.** By signing this binding arbitration agreement, you are waiving the right to have all disputes decided by a judge, jury, or by trial. The arbitrator's decision is final and binding. There is no right to an appeal unless permitted by state statute.
9. **Arbitration Panel.** Within thirty (30) days after a party to this Agreement has given written notice to the other of demand for arbitration of a dispute or controversy, the Parties to the dispute or controversy the parties will select a neutral arbitrator agreed upon by both parties and a venue that is convenient to both parties. If the parties do not wish to select an arbitrator, then the American Health Lawyers Association (AHLA) will administer the Arbitration. The arbitrator shall hold a hearing within a reasonable time from the date of notice of selection of the neutral arbitrator.
10. **Scheduling Order, Hearing, and Location.** The Parties will agree to a scheduling order, or the arbitrator will enter a scheduling order with the Parties input. The scheduling order will set forth the rules for the exchange of pre-arbitration discovery, including the exchange of medical records, photographs, witness statements, or other evidence the parties intend to introduce at arbitration. Unless otherwise ordered upon good cause, the hearing will occur within 180 days after selection of the arbitrators, which is in the best interest of the Parties for an efficient process and quick resolution. The location of the hearing will be in a location agreed upon by the Parties, and that is convenient to both Parties.
11. **Confidential Decision & Document Retention.** The arbitrators will make written findings on each matter in dispute. The decision, which includes findings of fact, conclusions of law, and signatures, is required to be marked "Confidential" and kept confidential by all Parties and arbitrators. The arbitrators will apply federal law or the substantive law of the state where the Facility is located, and that would have applied had the claim(s) been brought in the court system, including any limitation periods, and any caps on damages, unless otherwise preempted by the Federal Arbitration Act. If any damages are awarded, the decision must specify an amount for each type of

damages awarded. The Facility will retain copies of the signed agreement for binding arbitration and the arbitrator's final decision for 5 years after the resolution of any dispute resolved through arbitration, and will make these documents available for inspection by CMS.

12. **Expenses.** The arbitration expenses will be paid as provided in the award, consistent with state law.
13. **Representation by Lawyer(s).** The Parties may be represented by a lawyer prior to, during, and after arbitration.
14. **Grievances and Discharge/Transfers.** Despite this Agreement, the Resident may file its grievances directly with the Facility, with a representative of the Office of the State Long Term Care Ombudsman, with federal, state, or local officials, including federal or state surveyors, or other federal or state health department employees, or with any applicable regulatory agency. Appeals of involuntary discharges or transfers will be heard by an administrative law judge as required by state/federal laws and regulations.

_____ *Resident's Initials* _____ *Representative's Initials*

15. **Confidentiality.** The discovery, arbitration, and arbitration award are confidential.
16. **Severability.** If any term, phrase, or provision in this Agreement is held to be invalid or unenforceable by law, the Agreement will be deemed amended to conform with such law and will otherwise remain in full force and effect, as it is the parties' intent to ensure that any dispute is resolved solely by arbitration.
17. **Survival.** This Agreement applies to the Resident's readmissions to this Facility and survives any termination of the Admission Agreement.

_____ *Resident's Initials* _____ *Representative's Initials*

18. **Care Will Be Provided Regardless.** Care, diagnosis, or treatment will be provided whether or not the Resident signs this Agreement to arbitrate.
19. **Agreement to Arbitrate Fully Explained.** The Resident or his/her Representative acknowledge this Binding Arbitration Agreement has been explained to them in a form and manner that he/she understands and that he/she has been given an opportunity to review the Agreement with an attorney before signing it.
20. **Understand the Binding Agreement to Arbitrate.** The Resident or his/her Representative acknowledges that they fully understand this Binding Arbitration Agreement.

_____ *Resident's Initials* _____ *Representative's Initials*

21. **Record Retention.** If the Facility and a Resident resolve a dispute through Arbitration, a copy of the signed Agreement for Binding Arbitration and the Arbitrator's final decision will be retained by the Facility for five (5) years after the resolution of that dispute, and will be available for inspection upon request by CMS or its designee.

You are strongly encouraged to consult with an attorney or a trusted advisor before signing this agreement.

You have the opportunity to ask questions before signing this document.

Please do not hesitate to ask any questions that you may have.

The Resident/Resident's Legally Authorized Representative, by signing this agreement, also acknowledges that he/she has been informed and understands the entire agreement including that:

- a. Care, diagnosis, or treatment will be provided whether or not the Resident signs the agreement to arbitrate;
- b. The agreement may not be submitted to a Resident for approval when the Resident has been deemed incompetent by two physicians;
- c. The decision whether or not to sign the agreement is solely a matter for the Resident's (or the Resident's legally authorized representative) determination without any influence;

- d. The agreement waives the Resident's right to a trial in court for any future malpractice claim the Resident may have against the healthcare provider, absent revocation of the agreement consistent with state law.

THE RESIDENT:

Signature of Resident

Date

FOR THE RESIDENT, BY A LEGALLY AUTHORIZED REPRESENTATIVE: By signing below, I, Resident's Legally Authorized Representative, certify that the Resident has vested in me the authority to sign this Agreement on his/her behalf.

Signature of Resident's Legally Authorized Representative (if applicable)

Date

FOR THE FACILITY:

Signature of Facility Representative
(Provision of services by the Facility will constitute acceptance in absence of Facility Signature)

Date